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SENSITIVE

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E.O. 12958: N/A

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SUBJECT: DOJ HOLDS TOPICAL CRIMINAL LAW SEMINAR IN ARMENIA

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(U) Sensitive but unclassified. Please protect accordingly.

SUMMARY

¶1. (SBU) The Armenian criminal justice system is in need of virtually a complete overhaul, as it is institutionally corrupt, with almost no rights being afforded to suspects or defendants. Moreover, the situation has grown worse since March 1 as the presidential authorities have gone after political opponents on trumped-up charges. To help Armenian law professionals better understand the rights and responsibilities inherent in a properly functioning judicial system, the U.S. Department of Justice / Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT) held a comprehensive seminar on "Contemporary Issues in Armenian Criminal Law" on June 14-15, 2008. Held in Yerevan, Armenia, the seminar was attended by sixty-five Armenian judges, prosecutors, defense attorneys and police inspectors who were provided a comprehensive review of Armenian jurisprudence and practices, with comparisons to the American experience and the requirements of the European Convention on Human Rights. END
SUMMARY

A HORNET'S NEST OF LEGAL AND POLITICAL ISSUES

¶2. (SBU) Armenia's criminal justice system faces a thicket of legal, political and cultural issues as it moves slowly away from its Soviet roots. The system, while arguably functional, is essentially dishonest at its core. The Procuracy (prosecution service) maintains its effective control over both judges and defense attorneys, and almost every case ends in a conviction. The judges face removal from office or other retribution should they return an acquittal verdict. The defense attorneys are starting to challenge the authorities, thus far with little success. They too, however, can face retribution in the form of disbarment or criminal charges should they win a case or otherwise become too zealous in asserting their client's rights. The Presidency maintains control over the judges by keeping salaries low; although some judges are honest, many judges at all levels accept bribes. Judicial appointments are often obtained by payments, as they are money-making positions. Should any judge buck the Presidency, he would be removed based upon some alleged abuse of office.

¶3. (SBU) Moreover, in practice the Armenian criminal justice system

affords little in the way of adversarial rights. Although the law affords defense counsel the right to participate in police investigations, such participation is often minimal and of no significant value. Discovery, in the form of the police case file, is provided to defense counsel, but this is often at the conclusion of the investigation. Moreover, when defense attorneys are permitted to ask questions they must often do so by submitting the questions in writing, in the hope the investigator may choose to pose the questions to a witness. Thus, there is minimal substantive confrontation during the investigation phase. When the police need an attorney to represent a suspect they often turn to "pocket attorneys," who are careful not to press their client's rights too far, so that they will receive further references from the police. Thus, the factual inquiry is left in the hands of the investigator, with very little influence from defense counsel. The underlying concept is that only those whom the facts prove are guilty will ever be brought to trial.

¶4. (SBU) At trial, the rights of the defense are even more limited, as the whole point of the trial seemingly is to verify the investigation and pass judgment on the defendant. In one recent noteworthy case of a political opposition figure, the defense attorney asked to call as a witness a former Deputy Prosecutor General who had also been arrested at the time of the defendant's own arrest. The trial prosecutor successfully opposed the motion, saying that it was not necessary to call that witness as the defendant's guilt would be proven by other witnesses. Thus, there is a built in assumption that the only witnesses who need to be called are those who will confirm the defendant's guilt.

¶5. (SBU) Furthermore, although the Armenian Criminal Procedure Code, Article 105, states that force, fraud, threats, or other illegal action cannot be used to obtain evidence, the defense has no opportunity to challenge police investigation techniques because police officers are rarely called to testify. Police reports are received in evidence as self-authenticating

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documents, with no police testimony concerning the substance of the investigation. In other words, a written police report is considered unimpeachable evidence in its own right, not subject to challenge or cross-examination. The defense has no opportunity at trial to challenge either the lawfulness of the police investigation or the facts of the case.

USDOJ / OPDAT STEPS INTO THE BRIAR PATCH

¶6. (SBU) Given this cornucopia of corruption, the INL-funded Resident Legal Adviser (RLA; USDOJ/OPDAT program) has worked in a variety of ways to raise the consciousness of prosecutors and judges as to the dishonesty, unfairness, and imbalance of the Armenian criminal justice system. In December 2007 and February 2008, OPDAT conducted two seminars for prosecutors to raise their awareness about their ethical and human rights responsibilities, as well as to advance their trial advocacy skills. The RLA has also met with numerous judges, prosecutors, members of parliament, and defense attorneys for informal discussions of how the criminal justice system should be reformed. OPDAT has submitted draft legislation to key leaders that would eliminate corruption incentives, and the RLA has proposed numerous procedural reforms. For example, OPDAT proposed increasing penalties for perjury, a standardization of sentences, authorization of cooperation agreements to attack organized crime, and strengthening a suspect's right to defense counsel. In this effort the RLA has provided the Armenians with legislation from the Baltic states, Eastern European countries, and Russia. OPDAT has also provided more specialized training to prosecutors on money laundering in an effort to counter international financial crime. Furthermore, the RLA has reached out directly to the citizens of Armenia, speaking at several law schools and at the U.S. Embassy-supported "American Corners" located throughout the country.

¶ 7. (U) OPDAT's most recent training was its most ambitious and most successful. On June 14-15, the RLA led a comprehensive seminar on "Contemporary Issues in Armenian Criminal Law" in Yerevan for sixty-five Armenian judges, prosecutors, police inspectors and defense attorneys. In addition to the RLA, the trainers at the program were Delaware First Deputy Attorney General Richard Gebelein and the American Bar Association's Kregg Halstead. Mr. Gebelein has had extensive domestic and international experience, having served as Attorney General of Delaware, a judge of the Delaware Superior Court, and Chief Deputy Public Defender of Delaware. He also has served as an International Judge of the State Court of Bosnia and Herzegovina and the U.S. Army Rule of Law Officer for Coalition Forces in Afghanistan.

¶ 8. (SBU) The seminar consisted of a two-day review of Armenian jurisprudence and practices, with comparisons to the American experience, European practice, and the requirements of the European Convention on Human Rights. Training focused on how the defense in Armenian practice has minimal opportunity to confront or cross-examine witnesses, and how Armenian police cannot be challenged in court. The participants also discussed how pre-trial statements can be wholly relied upon in Armenia to sustain guilty verdicts, notwithstanding that the witness may have disavowed his/her previous statement or fled the country before trial. Also under discussion was the very meaning of an acquittal and how acquittals are viewed differently in the United States and Armenia. Significantly, the seminar reviewed the case law of the European Court of Human Rights, which Armenia must follow, to show how Armenian practices were in non-compliance with the ECHR.

¶ 9. (SBU) The participants explored issues related to plea bargains and cooperation agreements. Armenia has a limited version of plea bargaining, called "expedited proceeding," which allows the court to accept a guilty plea and forego a trial. In all other cases the court holds a trial, regardless of whether the plea is guilty or not-guilty. The Armenians were very skeptical of American plea bargaining and cooperation agreements. They felt human rights violations abounded -- it was wrong for the prosecutor to make a deal with a criminal, it was unfair to the victim, and unfair for those who would then be accused as part of a cooperation agreement. Moreover, they felt such agreements would be a green light for corruption if Armenian prosecutors could exercise such discretion.

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(COMMENT: Of course, in practice, the Armenian system is far more rife with abuses, corruption, and heavy-handed manipulation, and offers defendants few real protections. However, these participants are perhaps not being willfully combative in their reactions. They have been deeply steeped in the Soviet-legacy system in which the formal rules are supremely idealistic and theoretical, while actual practice is disconnected from the high-minded precepts. END COMMENT)

¶ 10. (SBU) In addition, the discussion focused on particular local practices. For example, in Armenia, as is quite common in Europe, the defendant has a "right to lie" as long as he does not falsely implicate another person. The RLA explained that from an Anglo-American Common Law perspective, this well-established right-to-lie in reality actually takes something away from the defendant -- the presumption of innocence. In Armenia, such a practice compounds the burden placed on the defense and the defendant, as there already exists a strong presumption of guilt present at every trial.

-----CONCLUSIONS

¶ 11. (SBU) The USDOJ/OPDAT seminar was successful in laying bare the fundamentally different philosophies and assumptions between Armenian practice and that of the United States. Armenians tend to accept authority without question, so it is natural for them to base a conviction on a police report that cannot be challenged. The seminar noted that the United States was founded on a mistrust of

authority, and many of our legal institutions reflect this heritage.

¶12. (SBU) The conference was also successful in providing a forum for the Armenian practitioners to informally speak with each other and air their grievances. The parties rarely have such a forum, and institutionally they frequently are pitted against each other.

¶13. (SBU) Furthermore, it was critical to introduce Armenian judges, prosecutors, defense attorneys and police to American jurisprudence, considering they are wholly unfamiliar with even the most basic practices, such as allowing defense counsel to ask questions. Moreover, the conference did not rely solely on the American experience, as there was a continuing reference to the decisions of the European Court of Human Rights. This interaction with both American law and the European Convention on Human Rights is of crucial importance, as Armenia's legislators and practitioners rewrite their criminal procedure code and explore which aspects of Western practices they should incorporate.

PENNINGTON